

1 ☐ EXPEDITE
2 ☒ No Hearing Set
3 ☐ Hearing is Set

4 Date:

5 Time:

6 The Honorable Christine A. Pomeroy

RECEIVED
APR 02 2007
INSURANCE COMMISSIONER
COMPANY SUPERVISION

7 STATE OF WASHINGTON
8 THURSTON COUNTY SUPERIOR COURT

9 MIKE KREIDLER,
10 INSURANCE COMMISSIONER,

11 Petitioner,

12 v.

13 WESTERN UNITED LIFE
14 ASSURANCE COMPANY,

Respondent.

NO. 04-02-00406-1

SIXTH REPORT OF RECEIVER

15 COMES NOW, Mike Kreidler, the Insurance Commissioner of the State of
16 Washington and Statutory Receiver of WESTERN UNITED LIFE ASSURANCE
17 COMPANY ("WESTERN UNITED"), James T. Odiome, Deputy Insurance Commissioner
18 and court-appointed Receiver of WESTERN UNITED, and Wayne C. Metcalf, III, Special
19 Deputy Insurance Commissioner and court-appointed Chief Deputy Receiver of WESTERN
20 UNITED, by and through their attorneys, Rob McKenna, Attorney General, and Christina
21 Gerstung Beusch, Assistant Attorney General, and hereby submit the Sixth Report of
Receiver, pursuant to RCW 48.31.040(5), and state as follows:

22 1. *Order of Rehabilitation.* On March 2, 2004, this Court entered an Order of
23 Rehabilitation and Appointment of Receiver placing WESTERN UNITED into rehabilitation
24 proceedings pursuant to Chapters 48.31 and 48.99 RCW, and appointing the Statutory
Receiver, Receiver and Chief Deputy Receiver (hereinafter collectively "Receiver").

25 2. *Amended Order of Rehabilitation.* On October 22, 2004, this Court entered an
26 Amended Order of Rehabilitation and Appointment of Receiver that replaced the original

1 Order of Rehabilitation and Appointment of Receiver and related back to the original issuance
2 date of March 2, 2004.

3 3. *Accounting to the Court.* RCW 48.31.040(5) and the Amended Order of
4 Rehabilitation require that the Receiver make accountings to the Court not less than
5 semiannually.

6 4. *Financial Report. Financial Report.* The 2006 statutory annual financial
7 statement of WESTERN UNITED may be viewed on the website of the Office of Insurance
8 Commissioner at www.insurance.wa.gov.

9 As of December 31, 2006 WESTERN UNITED had capital and surplus, as calculated
10 under Statutory Accounting Principles ("SAP"), in the amount of \$47,680,296. SAP is the
11 accounting framework to be used by insurance companies transacting business in Washington.
12 See RCW 48.05.073 and WAC 284.07.050. The June 30, 2006 statutory quarterly statement of
13 WESTERN UNITED reported capital and surplus of \$39,897,199. The six-month increase in
14 capital and surplus of \$7,783,097 is comprised of the following:

13	Quarterly statutory statement, June 30, 2006	\$39,897,199
14	Net loss from operations	(1,114,816)
15	Net realized capital gains	4,922,735
16	Net unrealized capital losses	(419,909)
17	Increase in net deferred income tax	527,647
18	Decrease in non-admitted assets	1,132,284
19	Decrease in asset valuation reserves	3,735,156
20	Change in surplus from reinsurance	<u>(1,000,000)</u>
21	Annual statutory statement, December 31, 2006	\$47,680,296

22 Included in the second half 2006 net loss from operations was a gain of \$4.1 million
23 from the release of additional actuarial reserves established through asset adequacy analysis
24 (cash flow testing). The Company performs asset adequacy analysis once annually.
25 Additional actuarial required reserves at December 31, 2005 were \$16.1 million. The
26 additional reserve requirement at December 31, 2006 was \$12.0 million, resulting in a release
through operating income of \$4.1 million. This release is not a regularly recurring operational
item.

1 Net realized capital gains and losses during the latter six months of 2006 are comprised
2 of the following approximate amounts (in millions):

3 Sales and adjustment of real estate	\$ 5.7 million
4 Securities losses and impairments	(1.0) million
5 Mortgage loan gains and reserves	<u>0.2</u> million
6 Realized net capital losses	\$ 4.9 million

7 Gains on the sale of real estate included approximately \$2,058,000 from the sale of a
8 manufacturing facility in Scottsdale, AZ; \$1,484,000 from the sale of commercial land in
9 Airway Heights, WA; \$964,000 from the sale of residential property in Anacortes, WA;
10 \$701,000 from the sale of an office building in Provo, UT; and \$647,000 of post-closing
11 additional income related to the previous sale of property in Hawaii known as Dillingham
12 Ranch as reported in the Fifth Report of Receiver. The net realized loss from securities
13 included an impairment loss in the amount of approximately \$487,000 on a single impaired
14 mortgage-backed bond holding (which was carried, after this adjustment, at approximately
15 \$2.8 million at December 31, 2006).

16 As of December 31, 2006 WESTERN UNITED held admitted mortgage loans and real
17 estate with carrying values of \$26,499,200 and \$62,485,186, respectively. Together, these
18 holdings totaled \$88,984,386 at December 31, 2006, or 8.8% of total admitted assets. These
19 figures compare to mortgage loan and real estate with carrying values as of December 31, 2003
20 of \$815,407,649 and \$105,818,628, respectively. Together, these holdings totaled
21 \$921,226,277 at December 31, 2003, which was the last reporting period preceding
22 WESTERN UNITED's placement into receivership. Consequently, during the period of its
23 receivership and rehabilitation through December 31, 2006, WESTERN UNITED has been
24 able to reduce its combined holdings of mortgages and real estate by approximately 90%.
25 Subsequent to December 31, 2006 two mortgage loans with carrying values of approximately
26 \$7.962 million and \$0.452 million, respectively, were repaid in full, further reducing the
Company's investment in mortgages.

RCW 48.05.340 sets forth the minimum capital and surplus for authorized insurance
companies such as WESTERN UNITED. WESTERN UNITED is in compliance with those
minimum requirements. Additionally, RCW 48.05.430 through .490 require an authorized

1 insurance company to have total adjusted capital and surplus in a sufficient amount as
2 determined by the company's Risk-Based Capital ("RBC") formula. Based on its RBC score
3 at the end of 2005, as adjusted for additional items recorded in its 2005 annual audit,
4 WESTERN UNITED was in a regulatory-action level status. As a result of this status,
5 WESTERN UNITED was required to prepare an action plan designed to correct the RBC
6 deficiency. On September 14, 2006, the Office of Insurance Commissioner approved
7 WESTERN UNITED's revised RBC action plan. At December 31, 2006, the Company filed
8 the required RBC report, which report measured the Company's RBC score at an amount
9 exceeding any regulatory or company action levels.

10 As indicated in its Fifth Report of Receiver, WESTERN UNITED has engaged the firm
11 of Amper, Politziner & Mattia, P.C ("Amper") of Edison, New Jersey to conduct an audit of
12 WESTERN UNITED's statutory financial statements for 2006. Their report is due no later
13 than June 1, 2007. Amper has previously audited Western's statutory annual financial
14 statements for years 2001 through 2005.

15 5. *Reinsurance.* WESTERN UNITED is reinsured under reinsurance agreements
16 with Old Standard Life Insurance Company ("Old Standard"), a former affiliated entity that
17 was placed into receivership by the Idaho State Department of Insurance on March 2, 2004.
18 The "reinsurance receivable" from Old Standard is WESTERN UNITED's single largest asset.
19 The Idaho Department of Insurance, which supervises Old Standard's receivership under the
20 authority of the Idaho Insurance Commissioner, has represented to the WESTERN UNITED
21 Receiver that it intends to keep the reinsurance payments of Old Standard to WESTERN
22 UNITED current and that Old Standard will not pay lower priority creditors prior to satisfying
23 its reinsurance obligations to WESTERN UNITED in full. As of December 31, 2006,
24 WESTERN UNITED had the following balances under the reinsurance agreements with Old
25 Standard:

26 Statutory-basis ceded reserve credit	\$68,606,795
Reinsurance recoverable on unpaid claims	1,803,877
Reinsurance recoverable on paid claims	<u>689,042</u>
Total reinsurance balances	\$71,099,714

All of the recorded amounts as shown above were current as of December 31, 2006 and

1 all of the treaty balances remain current through the date of this report. All settlements under
2 the agreements between July 1, 2006 and December 31, 2006 were in cash, as were settlements
3 in 2007 through the date of this report. Old Standard's remaining insurance liabilities consist
4 solely of obligations to WESTERN UNITED under these reinsurance agreements.

5 6. *Retention of Policyholders.* For the six-month period ending February 28, 2007,
6 WESTERN UNITED has experienced a slight increase in withdrawals for deferred annuity
7 contracts when compared to the previous six-month period and a larger increase in withdrawals
8 for deferred annuity contracts when compared to the same period one year earlier.
9 Specifically, for the six-month period ending February 28, 2007, WESTERN UNITED
10 distributed \$143.8 million, an increase of 5.9% over the previous six months when WESTERN
11 UNITED distributed \$135.8 million and an increase of 32.3% from the corresponding six
12 month period one year earlier when WESTERN UNITED distributed \$108.7 million. As
13 indicated in the Fifth Report of Receiver the increase in withdrawals for deferred annuity
14 contracts when compared to the same period one year earlier was expected due to the
15 continued expiration of the penalty period for early withdrawals on a large number of policies
16 and the continuing maturity of a large number of 3-year Interest Premium Return ("IPR")
17 annuity products. When an IPR annuity matures it forces the total surrender of the annuity
18 value. WESTERN UNITED expects withdrawals to maintain at or around current levels
19 through the end of August 2007 at which time they should begin to slightly decline. In spite of
20 the current level of withdrawals, Western United has not experienced liquidity issues caused by
21 withdrawals.

22 7. *Operating Expenses.* WESTERN UNITED continues its efforts to reduce
23 operating expenses. Since August 2004, staffing at WESTERN UNITED has decreased by
24 111 (from 196 to 85), a reduction of 56.6%. As stated in the previous Reports of Receiver,
25 substantial staffing reductions have been made possible by WESTERN UNITED's efforts to
26 reallocate its portfolio to more closely aligned with that of a more typical annuity company and
by retaining Midland Loan Services, Inc. to assist with the management of WESTERN
UNITED's real estate and commercial loan portfolios. Corresponding with the reduction in
staff, since August 2004 the running rate of total annual compensation (salary, benefits, taxes
and excluding bonuses) at WESTERN UNITED has decreased from \$11.8 million to \$6.0

1 million, a reduction of 49.2%. Through December 2006, WESTERN UNITED's actual non-
2 commission expenses were \$30.7 million, which is almost \$7.2 million below that of 2005
3 non-commission expenses of \$37.9 million. WESTERN UNITED's actual non-commission
4 expenses through December 2006 were comprised of \$7.5 million of salary, wage, benefit and
5 tax expenses (which included approximately \$0.7 million in expenditures for an employee
6 retention program), \$6.4 million of real estate owned holding costs (including \$0.8 million in
7 other legal expenses related to post-acquisition real estate matters), \$5.8 million of legal
8 expenses (including legal expenses related to pre acquisition real estate matters, lending
9 litigation, the bankruptcy action involving affiliates and third-party claims), \$3.2 million of
10 collection and bank service charge expenses, \$3.1 million of public accountant and consulting
11 actuarial expenses, \$1.7 million of insurance coverage not related to real estate owned, and
12 \$3.0 million of various other general expenses.

13 In addition to normal operating expenses, it should be noted that WESTERN UNITED
14 has incurred significant extraordinary expenses arising out of its arbitration against Ernst &
15 Young LLP and the bankruptcy cases involving WESTERN UNITED's indirect parent
16 company Metropolitan Mortgage & Securities Co., Inc ("Metropolitan") and its sibling,
17 Summit Securities, Inc. ("Summit"). With respect to the extraordinary expenses arising out of
18 its arbitration against Ernst & Young LLP, WESTERN UNITED anticipates higher levels of
19 such expenses through the completion of the arbitration hearing, which is currently scheduled
20 for September 10-28, 2007. With respect to the extraordinary expenses arising out of the
21 bankruptcy cases involving its affiliates, WESTERN UNITED anticipates continued lower
22 levels of such expenses until remaining matters are addressed or scheduled for hearing in the
23 bankruptcy actions as explained in the next section. These expenses are included in the \$5.8
24 million of legal expenses set forth above. WESTERN UNITED believes that expenses
25 incurred in the arbitration against Ernst & Young LLP will be exceeded by a potential
26 substantial recovery.

8. *Issues with Parent and Affiliate Companies.* Metropolitan and Summit
(collectively, the "Debtors") filed for chapter 11 bankruptcy protection on February 4, 2004, in
the United States Bankruptcy Court for the Eastern District of Washington Spokane Division
(the "Bankruptcy Court").

1 On September 26, 2005 the Bankruptcy Court approved a Disclosure Statement with
2 respect to a plan of reorganization prepared by the Debtors and their respective Creditor's
3 Committees (the "Plan"). WESTERN UNITED believed that the Plan, as filed, would result in
4 material adverse tax consequences to WESTERN UNITED. The parties subsequently agreed
5 to facilitate a transaction designed to avoid the adverse tax consequences created by the Plan.
6 That transaction closed on December 30, 2005. As a result, WESTERN UNITED withdrew its
7 remaining objections to the Plan and changed its vote to accept the Plan. An order of the
8 Bankruptcy Court confirming the Plan was entered on February 13, 2006.

9 The Plan provides for assets of the bankruptcy estate to be transferred to two (2)
10 Creditors Trusts created under the Plan: one for Metropolitan and one for Summit. At the time
11 of confirmation of the Plan, WESTERN UNITED was a wholly owned subsidiary of Western
12 United Holding Company ("WUHC"). WUHC, in turn, was a wholly owned subsidiary of
13 Metropolitan; however, WUHC owed and still owes substantial sums to public investors
14 holding securities issued by WUHC. Notwithstanding the obligations to these third parties,
15 WESTERN UNITED is an indirect subsidiary of Metropolitan. When the Plan was
16 consummated on April 25, 2006, among other things, Metropolitan transferred its interest in
17 WUHC to the Metropolitan Creditors' Trust. However, by order of this Court, WESTERN
18 UNITED remained, and continues to remain, under the sole control of the Insurance
19 Commissioner and, therefore, WESTERN UNITED cannot and did not relinquish control over
20 it to the Metropolitan Creditors' Trust. A change of control of WESTERN UNITED and the
21 eventual emergence of the company from receivership can only occur with the approval of the
22 Insurance Commissioner and this Court.

23 WESTERN UNITED has asserted significant claims against the Debtors. The Debtors
24 have disputed most of these claims. In addition, Metropolitan has asserted various claims
25 against WESTERN UNITED which would operate as offsets against any claims allowed in
26 favor of WESTERN UNITED. WESTERN UNITED believes it has defenses against most of
Metropolitan's claims and that, in any event, WESTERN UNITED's claims against the
Debtors greatly exceed the Debtors' claims against WESTERN UNITED. The parties
attempted mediation in order to resolve their various disputes, including disputes about the
claims. Objections to WESTERN UNITED's claims have been filed in the Bankruptcy Court.

1 WESTERN UNITED has responded to these objections. No hearing has been set with respect
2 to the claims or objections.

3 Prior to the evidentiary hearing that was scheduled in the Bankruptcy Court for May 17
4 and 18, 2006 to "estimate" WESTERN UNITED's claims for the purpose of establishing a
5 reserve to protect WESTERN UNITED from dissipation of the Debtors' assets before
6 WESTERN UNITED's claims are allowed, the parties entered into an agreement which,
7 among other things, estimated WESTERN UNITED's claims for the purpose of the initial
8 distributions of the Debtors. The parties agreed that, for purposes of the initial distribution by
9 Metropolitan, WESTERN UNITED's claims would be estimated at \$50,000,000 and that a
10 reserve equal to the amount that would have been distributed to WESTERN UNITED if such
11 claims were allowed would be established in a separate, segregated interest-bearing trust
12 account. The parties further agreed that, for purposes of the initial distribution by Summit, no
13 estimate of WESTERN UNITED's claim would be made and no reserve would be established.
14 The agreed upon estimation does not represent concessions by any of the parties that the
15 estimate reflect WESTERN UNITED's actual claims nor does it represent a ceiling on, the
16 aggregate face amount of WESTERN UNITED's claims. The parties further agreed to provide
17 notice to each other prior to (i) any further distribution by the Debtors or (ii) any request to
18 schedule a hearing for the purpose of adjudicating WESTERN UNITED's claims against the
19 Debtors. Under the Agreement estimating WULA's claims approved by the Bankruptcy Court
20 on June 1, 2006, notice of a distribution could not be given prior to December 31, 2006, and
21 any claim adjudication hearing could not occur prior to March 31, 2007. As of the date of this
22 report, WESTERN UNITED has not received a notice of a further distribution, and neither the
23 Debtors nor WULA has requested a hearing for the purposes of adjudicating WESTERN
24 UNITED's claims against the Debtors.

25 For tax years prior to January 1, 2006, WESTERN UNITED was consolidated for tax
26 purposes with Metropolitan. At December 31, 2006, WULA had a federal tax receivable for
the tax years 2003 and 2005 of \$5,757,207 and \$6,554,281, respectively. Metropolitan has
received the 2003 receivable amount and is holding that amount as a fiduciary for WULA.
Upon Metropolitan's receipt of the 2005 receivable amount it will also be holding that amount

1 as a fiduciary for WESTERN UNITED. As of the date of this Report, Metropolitan disputes
2 that it holds, and will hold, those amounts as a fiduciary for WESTERN UNITED.

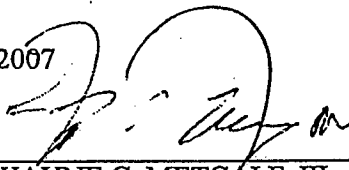
3 9. *Continued Prospects for Rehabilitation.* The Washington Office of the
4 Insurance Commissioner continues to be involved in discussions with pre-approved potential
5 purchasers of WESTERN UNITED with the current deadline to submit proposals on April 6,
6 2007. Earlier proposals to acquire WESTERN UNITED were received (including an offer
7 submitted following the filing of the Fifth Report of Receiver) but did not meet the
8 requirements of the Office of the Insurance Commissioner. If mutually agreed upon terms can
9 be reached as a result of the current discussions, the Receiver will file with the Court, with
10 notice to all interested parties, a petition for approval of the sale. If terms cannot be agreed
11 upon with a potential purchaser at this time, the Receiver will continue to operate WULA
12 consistent with the plans discussed herein to protect the policyholders

13 As indicated in previous Reports of Receiver and as part of its efforts to achieve a
14 successful rehabilitation, WESTERN UNITED, with the assistance of Midland Loan Services,
15 Inc.,¹ is continuing its efforts to sell its real estate assets and resolve commercial loans and will
16 be placing the proceeds in investment vehicles typical of annuity companies such as
17 investment grade securities. Currently, the total statutory book value (as of March 8, 2007) of
18 WESTERN UNITED's commercial real estate properties that are under contract for sale
19 (subject to the prospective purchasers completion of their due diligence) is approximately
20 \$19.8 million or approximately 31.5% of the statutory admitted value (as of December 31,
21 2006) of its real estate portfolio. All of these potential sales are currently scheduled to close by
22 or before July 13, 2007, and if they close as anticipated, WESTERN UNITED will post gains
23 over the book values of these assets.² Also as part of its continued efforts towards
24 rehabilitation, WESTERN UNITED will continue its efforts to reduce operating expenses and
25 carefully monitor extraordinary expenses.
26

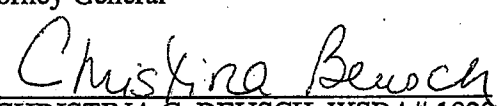
24 ¹ In October 2005, WULA retained Midland Loan Services, Inc., a nationally recognized provider
25 of loan servicing, special servicing and asset resolution services, to manage and assist in the orderly disposition or
26 resolution of a substantial portion of WESTERN UNITED's commercial real estate and loan portfolios.

² As indicated in the Fifth Report of Receiver and as previously experienced, any of these
potential transactions could fail to close as anticipated which would necessitate further sale efforts.

1 DATED this 30th day of March, 2007

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4 WAYNE C. METCALF, III,
5 Chief Deputy Receiver for
6 Western United Life Assurance Company

7 Presented by:
8 ROBERT M. MCKENNA
9 Attorney General

10 By: 
11 CHRISTINA G. BEUSCH, WSBA# 18226
12 Assistant Attorney General
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1 ☐ EXPEDITE
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6 The Honorable Christine A. Pomeroy

7
8 **STATE OF WASHINGTON**
9 **THURSTON COUNTY SUPERIOR COURT**

10 MIKE KREIDLER,
11 INSURANCE COMMISSIONER,

12 Petitioner,

13 v.

14 WESTERN UNITED LIFE
15 ASSURANCE COMPANY,

16 Respondent.

NO. 04-02-00406-1

**CERTIFICATE OF SERVICE OF
SIXTH REPORT OF RECEIVER**

17 This will hereby certify that on the 30th day of March, 2007, I mailed a true and correct
18 copy of the **Sixth Report of Receiver** in this matter, via the United States Mail, first-class
19 postage prepaid, in sealed envelopes, at Olympia, WA, to the following interested parties:

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5 DATED this 30th day of March, 2006.

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8 Nicole Teeter, Legal Assistant
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